

**Remarks**

Claims 22-24 are currently pending. Claim 24 has been amended to more clearly set forth the subject matter of the invention. In view of the amendment and comments below, reconsideration of the present application is respectfully requested.

**Applicants' Response to Rejection of Claims Under 35 U.S.C. §112**

Claim 24 has been rejected under 35 U.S.C. §112, second paragraph as being indefinite. Specifically, claim 24 lacks antecedent basis for the term "said lollipop product" in line 2. Applicants respectfully submit that the non-narrowing amendment of claim 24 obviates this ground of rejection. Reconsideration and withdrawal of the rejection under Section 112 is therefore respectfully requested.

**Applicants' Response to Rejection of Claims Under 35 U.S.C. §103**

Claims 18-21 have been rejected under 35 U.S.C. §103 as allegedly unpatentable over 4,250,196 to Friello ("Friello") in view of U.S. Patent No. 3,062,662 to McDonald. Applicants respectfully traverse these rejections on the grounds that the Examiner has failed to establish a *prima facie* case of obviousness. Specifically, the references include no motivation to modify or combine the references, the teachings of the references are not properly combinable, and even if combined, the references fail to teach the invention as claimed. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

The present invention includes a three-material confection which includes center layer of a semi-liquid material, an intermediate layer of a gum material and an outer layer of a hard candy material. The candy may also be in the form of a lollipop. The present invention has prepared this lollipop product by addressing and compensating for the issues related to center-fill gums, such as leaking and liquid migration from the center-fill which results in a non-liquid center.

In order to establish a *prima facie* case of obviousness, (1) a reference or combination of references must provide some suggestion or motivation to modify the reference or to combine the teachings; (2) there must be a reasonable expectation of success; and (3) there must be a

teaching or suggestions of all claim limitations. The teachings must consider the reference as a whole and the proposed modification cannot render the prior art unsatisfactory for its intended purpose.

Friello teaches a center-filled gum composition having a liquid center. The formulation of the center-fill allows for the use of an aqueous solution including a hydrogenated starch hydrolysate which avoids the need for addition of glycerin. Friello recognizes the inherent problems of providing a commercially acceptable center-filled gum such as potential leaking and hardening of the center-fill. The focus of the teachings of Friello is to provide an acceptable gum product which provides the benefit of a liquid center gum to the consumer. Friello provides no teaching or suggestion to add any coating to the gum composition, nor how such a coating may be accomplished.

McDonald is cited for teaching a combination of chewing gum and candy in a lollipop form. McDonald prepares this confection by inserting a lollipop stick into a gum piece and then dipping the gum into a hot candy syrup. The gum must stay in the syrup for a sufficient time "so that the bubble gum will partially melt and soften and mix with the candy." Column 2, lines 54-55. The purpose of McDonald is to provide a combination of candy and gum where "the candy composition intermixes with a substantial part of the bubble gum material." Column 1, lines 35-36.

The Examiner admits that Friello is devoid of any disclosure of an outer layer of hard candy material, but states:

**It was well known in the art to coat gum with hard candy material as evidence by McDonald...Therefore, it would be obvious to coat the gum of Friello as taught by McDonald.**

In making this combination, the Examiner has failed to point out why this combination is proper. In fact, the Examiner admitted that Friello fails to suggest candy coating a center-filled gum. It is clear there fore, that the required motivation for combining this reference with a coating reference is lacking.

Nonetheless, turning to the McDonald reference, this reference is cited for its alleged teachings regarding coating of gum. However, even if one were to combine the teachings of McDonald with Friello, one could not expect to achieve a successful candy-coated center-filled product by following the teachings of McDonald and Friello. McDonald does not contemplate the inclusion of a center-filled gum and therefore does not accommodate for the potential issues of leaking of the center. Melting the gum layer as required by McDonald would almost certainly lead to leaking of the liquid center which is contained by the gum.

McDonald requires the combination of a gum with the candy by melting the gum and candy together. McDonald is concerned only with solid gum centers which are dipped into hot candy syrup. It is clear from the teachings of McDonald that this dipping process was not intended for liquid-center-filled gums since to allow partial melting and softening of the candy with the gum may jeopardize the integrity of the center-filled gum. As the Examiner is aware, there are many difficulties in producing and maintaining commercially viable center-filled gums and one of ordinary skill in the art would avoid processes which might introduce additional problems such as premature migration. Thus one of ordinary skill in the art would not employ the process as taught by McDonald to coat a center-filled gum.

For the reasons set forth above, there is no motivation in any of the references to combine the teachings of each. Even if combined, the references would not lead one of ordinary skill in the art to prepare the invention of the present claims.

In view of the above amendments and remarks, Applicants respectfully submit that the present application, including claims 22-24 is now in condition for allowance. Favorable action thereon is respectfully requested.

Should the Examiner have any questions with respect to the above amendments and remarks, the Examiner is respectfully requested to contact Applicants' undersigned counsel at the telephone number below.

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Respectfully submitted,

A handwritten signature in cursive script, reading "Christina L. Warrick". The signature is written in dark ink and is positioned above a horizontal line.

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